

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIAN D. MURPHY,	:	
<i>Individually and on behalf of other</i>	:	
<i>similarly situated current and former</i>	:	
<i>homeowners in Pennsylvania</i>	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 13-5719
BANK OF AMERICA, N.A., ET AL.	:	

**ORDER**

**AND NOW**, this 17<sup>th</sup> day of November, 2014, it is **ORDERED** as follows:

I. The Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) of Defendants, McCabe Weisberg & Conway, P.C., Terrence J. McCabe, Marc S. Weisberg, and Edward D. Conway (ECF No. 41); and the Motion of Defendants Bank of America, N.A. and the Bank of New York Mellon, N.A., to Dismiss Plaintiff's Complaint (ECF No. 42); are **DENIED** without prejudice.

II. Within 20 days of the date of this Order, Plaintiff shall file a Civil RICO Case Statement that includes the facts Plaintiff is relying upon to prove his RICO claim. In particular, the Civil RICO Case Statement shall be in a form that uses the numbers and letters as set forth below, and shall provide the following information:

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d).
2. List each defendant and state the alleged misconduct and basis of liability of each defendant.
3. List the alleged victims and state how each victim was allegedly injured.

4. Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:
  - a. List the alleged predicate acts and the specific statutes that were allegedly violated;
  - b. If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the “circumstances of fraud or mistake shall be stated in particularity”;
  - c. Describe how the predicate acts form a “pattern of racketeering activity”; and
  - d. State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe.
5. Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:
  - a. State the names of the individuals, partnerships, corporations, associations, or other legal entities that allegedly constitute the enterprise;
  - b. Describe the structure, purpose, function and course of conduct of the enterprise;
  - c. State whether any defendants are employees, officers or directors of the alleged enterprise;
  - d. State whether any defendants are associated with the alleged enterprise; and
  - e. State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself; or members of the enterprise.
6. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.
7. Describe the effect of the activities of the enterprise on interstate or foreign commerce.

8. If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:
  - a. State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and
  - b. Describe the use or investment of such income.
9. If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe the acquisition or maintenance of any interest in or control of the alleged enterprise.
10. If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:
  - a. State who is employed by or associated with the enterprise; and
  - b. State whether the same entity is both the liable “person” and the “enterprise” under § 1962(c).
11. If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe the alleged conspiracy.
12. Describe the alleged injury to business or property.
13. Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.
14. Provide any additional information that you feel would be helpful to the court in trying the RICO claim.

III. Within 20 days of the date on which Plaintiff files the Civil RICO Case Statement, Defendants may renew their Motions to Dismiss. Defendants may supplement their renewed Motions to Dismiss to address any new information contained in the Civil RICO Case Statement.

**IT IS SO ORDERED.**

**BY THE COURT:**



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**R. BARCLAY SURRICK, J.**